Stanley. Clark. Bagg.

Montreal 16th November 1841.

Digitized by the Internet Archive
in 2010 with funding from
Osgoode Hall Law School Library, York University

http://www.archive.org/details/collectionofextr00bagg

Extract.

A Collection of Extracts from the Coutume de Paris.

Translated

from the

French

S. C. Bagg.

Montreal

16th November 1841.

Extracts from the Couture de Paris,
Translated from the French.

A Fief

A Fief is an hereditament held in consideration of Fealty and Homage and other rights, payable by each new purchaser to the Seigniors from whom they are held, being quint fief.

Quint

The quint is the fifth part of the purchase money in the event of the sale of the fief or other act equivalent to in case of Exchange.

Relief

The Relief is one years revenue of the fief in the event of any other mutation thereof, except in some cases where no pecuniary rights or profits are due.

Persons in Mortmain.

Persons in Mortmain being Churches Hospitals Colleges and corporations pay to the Seignior

a.

A right of indemnity which is a [illegible] for fiefs and the quint for [illegible].

Saisie Seigni.

In default of fealty and homage, payment of the quint or relief the Seigneur can seize the fief and apply the [illegible] thereof to his own use but the Seigneur must be allowed his expences and labour in putting the grain into the granary until his just claims are satisfied. This is the case when there is what is called ouverture de fief which is when there is no person to render fealty and homage as where the ancient vassal is deceased, either naturally or civilly, or the fief is abandoned. The discharge, mortgage, dower, the [illegible] or by [illegible] exchange nothing [illegible] of property.

The Seigneur cannot seize until after the expiration of forty days after the ouverture and must certify the

same

the same to the Vassal.

The husband can seize his wife's fief in similar cases so can tutors and Curators and usufructuary but usufructuary cannot seize in default of denombrement. Feudal Seizure is preferred to seizure of creditors.

Fealty and Homage.

No other rights but fealty and homage and the oath of fidelity are due when the estate is inherited by persons in the direct line of succession from the former proprietor in the ascendant or descendant, but sale rights are due by the heir in case he renounces the succession and afterwards is adjudged to him at public sale because in this instance he is reputed a stranger.

When the property falls to descendants in the direct line nothing is due but fealty and homage, this extends also to the wife accepting the Community for life.

fief acquired by the husband during the continuance thereof extends also to the heirs of the husband for the half of the communauté and likewise in case the wife renounces the community for the whole, but if at the partition the wife cedes her share in the communauté to her husband's heirs the relief is due to the seignior.

Denombrement.

The vassal must deliver his de=nombrement within forty days after reception in fealty and the feudal seignior in default of denombrement does not permit application of profit by the seignior. Forty days are allowed to the Seignior to contest oppose or object to the denombrement after it is delivered which if not done at that period is deemed to the acknowledged.

Feudal.

Feudal rights prescriptible in Thirty Years.

The rights can prescribe the feudal profits due to the seigneur in thirty years.

Droit d'ainesse.

To the eldest son belongs by right the castle or principal manor and grounds contiguous to the manor which is called droit d'ainesse, this is a right only acquired at the death of the father.

The children of the eldest son represent their father in this right even if they are all females, the right of ainesse is taken previous to partition of property.

Parents cannot in anywise prejudice this right.

When the father and mother decease having fiefs and inheritances held [illegible] leaving only two children each of succeeding to the eldest son by right of Aineſse belongs in each of the succession, a whole held in fief to serve as Manor as above and two thirds of the fiefs held by: the same with franc aleu noble. If there are more than two children in that case the eldest son is entitled to only half of the fiefs, in a Manor the eldest son may recompense the other children for their shares therein.

If the fief consists in land only the eldest son has a right to an arpent being in lieu of a Manor. When there are only females the right of Ainesse is divided equally amongst them.

The right of Aineſse does not exist in collateral succeſsion.

Retrait Feodal.

The Seignior can retain or reacquire

the fief held under him which is sold on paying the purchaser the price and legal costs but this right must be exercised within forty days after the sale is notified to him and the contract exhibited.

Droit de retrait can only be exercised in case of sale. — — The Seignior acquiring by this right must discharge mortgages inféodés but not those non inféodés.

The action of retrait is prescribed in thirty years in case notification of sale and exhibition of deeds was not made.

Copie of sale must be delivered to the Seignior in order to exclude him from his rights of retrait after forty days.

Right of retrait lost
if quint is received.

The Seignior looses his right of retrait.

retrait if he receives the quint.

Retrait lignager.

Retrait lignager is preferable to Retrait feodal.

The Retrayant lignager who exerts the seigneurie must pay the quint.

Quint is due at each sale or other act equivalent to sale and also in the following causes.

1st When the sale is made by voluntary contract.

2nd When the sale is perfected and the purchaser discharged of the price.

3d In case the fief is leased à rente rachetable.

4th When the sale is effected and afterwards rescinded by the parties.

5th When the property is sold to a [illegible].

6th When a fief is given in payment of a debt.

7th When the [illegible] has released two thirds of his fief [illegible] and afterwards sells the same to the same person in which case quint is due for [illegible] and [illegible].

8th When the fief is bequeathed on condition of paying a certain sum to some person.

But a fief given on condition of supporting the donor during his life occasions ouverture de fief for the relief only.

9th The seigneur acquiring a fief dans sa mouvance owes the quint to the fermier to whom he ceded his feudal rights in the Bail a ferme.

10th Quint is due in case of sale between father and son.

11th The purchaser is bound to pay this right to the seigneur [illegible] represented by the present seigneur.

10th In case of exchange of property against property or property against rent.

Droit de quint is not due in the following cases of sale.

1st When the parties have voluntarily annulled the sale, though after being perfected.

2nd When the sale is on a certain condition, and the condition is not performed.

3d When the sale is made subject to redemption, and the redemption is exercised within the stipulated time, provided always that the time does not exceed nine years.

4th When the sale is annulled by virtue of the pacte commissoire.

5th When the purchaser is obliged to give up the property to satisfy the [illegible] of the vendor [illegible] to

[illegible]

only one due.

6th In case the fief is a mutation by [illegible].

The quint is not due in the following cases.

1st When the fief is sold or released a bail non rachetable provided the same does not exceed two third of the fief.

2nd In case of partition of the fief

3d The property acquired during the communauty and given to the wife after the decease of the husband for her matrimonial conventions.

4th The property released to the Children for a sum of Money to them promised en dot or en avancement d'hoirie.

5th The property given for payment of a debtor to his creditor.

6th The fief acquired in mortmain and sold within a year and a day to another, simple droits only are due.

7th When the seigneur dominant has reacquired the fief sold.

8th When fief of domaine is sold to the King's secretary or other privileged person.

9th Sale governed by Cout du Vexin le Francais.

10th Bailing lease or emphyteotique when no money is disbursed.

11th Sales of usufruct.

12th The sales of timber.

13th The fief given and estimated by the contract of marriage to the husband by the wife.

14th The adjudication by decret made at the suit of the creditors to the beneficiary heir.

In Succession and inheritances the females do not inherit with the males in the same degree, thus the brother excludes the sister in the Succession whole of his deceased brother; yet there is a case where the females succeed together with males in the same degree, namely in the Succession of [illegible] when the females are in the same stock or degree and the males are not because [illegible] return to the stock from whence they were derived, but to exclude the mother in the same degree.

When the children of a brother or Sister succeeds to the Succession of their uncle or Aunt by representation the brothers exclude the Sisters in the Succession of that part of the property which they inherit from their peace and rest.

But in case of [illegible] of either of them and theirs the father does not exclude the sisters.

When fealty and homage only is due.

Fealty and homage only is due when fiefs are given to descendants in the direct line.

Males at their majority and females at puberty, may render fealty and homage.

Relief when due.

Relief is due on every mutation of property, except those made by sale or Droit a vente [illegible], and those made by succession or donations in the direct line. The eldest son in making the fealty and homage acquits his sisters of the same during their first marriage.

Females do not pay the relief at their first marriage but in any other succeeding marriage it is due, if a fief falls to a female in the collateral line before her marriage, relief is due thereon also after the marriage.

Commencement of relief.

The relief commences from the day when the vassal was acknowledged in fealty and homage.

Vassal can Alienate.

The vassal can Alienate or dismember his fief without the consent of his Seignior provided the same does not exceed the two thirds thereof and that some seigniorial right is reserved therein.

When Seignior can destrain.

If there is Ouverture de fief the Seigneur may destrain the whole of the said fief except the seignior

las.

has enfeoffed the Seignior [illegible] right ceases by making the said Reunion.

Property Acquired by Seignior In his fief.

Property acquired by a Seignior in the fief in his censive is reunited to his fief and becomes feudal without the Seignior expressly declares that it shall remain en roture.

Franc Aleu.

Franc aleu under whom is held when a fief is divided or partitioned the same is fief Noble consequently the eldest son has right of preciput but when no censive or fief is held it is partitioned Roturement.

Notwithstanding the Seignior may have a right by title or twenty four years enjoyment they yet this right is prescribed still in thirty years if not exercised during that time.

Cens sur Cens.

He who possesses a property a cens cannot release it a cens because Cens cannot be put on cens.

Lods et ventes.

Right of sale due to the seignior censier is one twelfth of the purchase money.

Amende.

Amende is due in cases of secret sales, and not notifying same to seignior within twenty days 3/9 Echus in the amende.

Payment of lods et vente.

How recoverable.

Payment of lods et ventes is recoverable the same as that of quit.

Lods et ventes and Amendes are recovered by simple Action and not

by seizure of the hereditament.
On taking possession or seizin of the estate douze deniers parisis is due.

In default of the payment of cens cinq sols parisis d'amande is due.
Lods et ventes is due on all rentes foncières rachetable sold or released to others, likewise when sale is made by decret or condition of vente rachetable.

Moveables.

Moveables are not mortgageable nor subject to retrait.
Sales of Moveables for whatever sum cannot be rescinded on account of the smallness of the price.
Moveable successions are regulated different from immoveables.
Moveables acquired by the conjoint during the marriage by title of donation is acquest [illegible] otherwise for the

ents.

into the community.

Immoveables.

Immoveables that fall to the conjoints by succession in the direct or collateral line are proper to him or her who inherit the same.

Actions for sums of money are reputed Moveables.

An Immoveable can be made to take the nature of a Moveable, for instance, when the woman having no moveables or sums of money to put into the community, she can ameublir a property to make it fall into the community, but the ameublissement of the immoveable takes effect with regard to the husband only, and not with regard to the creditors, because, in the [illegible] has not been performed, at the [illegible] of the wife dying no children the father will not succeed to the property as [illegible] to his daughter, on the contrary the collateral heir of the branch of the property is derived from the maternal line will succeed. The wife cannot dispose of [illegible] part of the property Ancien by last will if it is propre to her.

Immoveables are either real or fictitious, real immoveables as houses and lands are divided into propres, acquets, and conquets.

Propres.

Propre is property acquired in the direct or collateral line and is subdivided into propres Ancien and propres Naissant.

Ancien and Naissant.

Propre Ancien is property derived from one ancestor in the direct line. Propre Naissant is that acquired by our parents and inherited &c.

Acquets.

Acquets is property acquired by onerous or lucrative title or collateral donation.

The property acquired by [illegible] [illegible] [illegible] are [illegible] [illegible] [illegible].

Fictitious Immoveables.

Fictitious immoveables are [illegible] [illegible] the fiction of immoveables, and this fiction is founded on four causes; 1st The union of the moveable to the immoveable. 2nd The disposition of the custom. 3rd augmentation of the immoveables. 4th the disposition or the destination of the person.

Rents Constitue are Immoveable.

Rents constitue are [illegible] -

fiction.

[illegible] immoveables.

Notes and Obligations are Moveables.

[illegible] Obligation [illegible]

merchandize or other Moveables

[illegible] Moveables.

What Moveables & Immoveables are.

Materials for building a house are Moveables, but those belonging to a demolished building are immoveables;

Fish in a fish pond are immoveables, but [illegible] are Moveables,

pigeons in a dove cot are immoveables; but in a cage are moveables.

Bee hives are immoveables.

Wood and grain cut down are Moveables, but when growing and holding by the root are immoveables

Arrearages of rente and rent of house, which are due are Moveables, but those not due are immoveables.

Money given by ascendants to their children in [illegible]

[illegible]

employed in purchase of immoveables, altho' it has been employed is still a [illegible] by reason of its destination, and does not fall into the community; idem money stipulated as propres. Every one of the sums of money stipulated moveables and immoveables, in the succession of the person, altho' bought them and which are [illegible] they are stipulated propres.

In [illegible] stipulation [illegible] must be observed, that they are [illegible] according to the different stipulations in consideration of a moveable sum [illegible]
1st That the sum of money or moveable property, [illegible] being in Moveables shall be to him as nature de propres.

The effect of this stipulation is that the [illegible] into the community which otherwise they would.

If the Tutor or Curator omit inserting the stipulation in the contract of his ward, she may nevertheless claim and receive two thirds out of the community as paraphernes.

Instead of parents [illegible] the [illegible].

But if the surviving of the married marry his or her daughter with the [illegible] belonging to her in the succession of her father or mother, and omits this insertion the daughter can retake the same.

In case of marriage stipulated for, according to the children, to the division of the community between the heirs, that is to say when the party to whom they are payable dies first. The collateral heir also ex=
=cludes the survivor in this case.

[illegible]

Upon the children have received
the money as heirs to their Mother,
the Stipulation is then consummated,
And the money becomes again as
free as it was until then, the father
succeeds to his children, even
should they die during minority,
to the exclusion of the children.
Another stipulation is, that the
Movable and unmovable property of each
one of the parties bringing in marriage
shall be to him or heir to his or
hers en calidad de propios.
The effect of which is that this
property is inherited by the children
to the exclusion of the surviving parent.
they likewise inherit from one
another, but the surviving parent
succeeds to the property at the death
of the last surviving child as
heritier ab intestat to the exclusion
of collaterals

Without stipulation is that the Money or Moveables, brought in Marriage by one of the parties shall be presumed to him or her and to his or her de coté et ligné, in which Case Collaterals succeed to the property at the death of the last surviving child to the exclusion of the surviving parent, and if the property was given by father and mother of the daughter, the paternal and maternal collaterals succeed equally, but if the property was given by one or the other as by the daughters father, in this Case the collaterals of the last surviving Child on the Maternal Grandfather Side succeed, if the Maternal grandfather is dead - otherwise he would succeed by right of reversion.

A fourth stipulation is that the money given by father and mother to their daughter, shall be employed in the purchase of landed property, to be to her and hers _de son côté et ligne_ in nature of propres or only to be to her in nature of propres anciens, as inherited by succession from her ascendants. But if the stipulation does not contain the clause, _des siens d'estoc côté et ligne_, the father would inherit from his children the money not employed, provided the child died in majority, otherwise the money not employed would go to the father and mother, as being in lieu of the immoveables it was destined to purchase.

Rents constituées à prix d'argent are reputed immoveables, until they are reimbursed.

Donation de rente is subject to diminution.

Rentes are divided the same as immoveables, the _enfans des_ premiers succeed thereto.

Rente Constituees are reputed moveables as far as regards the retrait lignager to which they are not subject altho reputed imme.

An exception to this rule is this, that the rente belonging to the minor after redeemed, the money arising therefrom is still immoveable as also the property acquired therewith, to go to the heirs of the minor on the side from whence he derived them ~~them~~, if acquired by inheritance from his father, and repurchased during his minority, and he dies before the money is employed, in the price of the property, the money will go to his paternal heirs to the exclusion of his maternal, as the others nearer in degree.

Idem if the Minor's inheritance is sold by tutor or Curator to pay debts, the residue after debts are paid will fall to those who would have inherited the property had it not been sold. But this is only when the minor dies in minority.

Money arising from the sale of immoveables whether heritage or rents or redemption of a rente, belonging to one of the married effected during Marriage is reputed immoveable to prevent its falling into the community.

How private contract become mortgages.

Private Contract become Mortgages

tion.

from the day of confession in judgment or acknowledgment before Notary.

Prescription.

Prescription is a right to a thing obtained by a long and uninterrupted possession.

Four things are requisite to constitute prescription.

1st That the thing is prescriptible.

2nd That the possession is continued during the time prescribed by the laws.

3rd Good faith on the part of the person who prescribes.

4th A right of possession sufficient to acquire the right of the thing prescribed.

All these are neceſsary in prescription for ten or twenty years.

With regard to the second

Condition, natural possession is not sufficient, there must be civil possession in order to prescribe.

If a person has possessed and enjoyed a property, on *vente* *[illegible]* equitable title and in good faith (which also attaches to his own deception) without interruption for ten years, between *presens* and twenty years between *absents* of age and unprivileged to acquire the property by prescription.

Prescription does not run against the property belonging to a married woman sold by her husband without her consent, until the death of her husband.

No prescription against minors, nor [illegible] after citation [illegible]. Mortgages on property [illegible] thirty years without title or [illegible].

Pre

Prescription of Dower commences after the decease of the husband, between majors and unprivileged persons.

A Wife's Mortgage on property for her dower is prescribed if not claimed in ten or twenty years (Le exposé P. page 264)

If a person possessed owned and enjoyed a property rente or any thing else prescriptible for the space of three years without title and uninterruptedly he acquires it by prescription, between majors and unprivileged persons.

You Cannot prescribe against the condition of your title.

Thus a vassal cannot prescribe his Seigniour, his rights to cens

Built

fief and homage, the same with. A person who acquires property in condition of paying the dower because this condition cannot be prescribed in any time, the right of repurchasing a *rentes constituée* à prix d'argent is not prescriptible.

The right reserved in deed to repurchase a property or *rente foncière* is prescribed in three years.

Cens are prescriptible in certain cases, between Seigneurs for instance if a vassal has a property part of which is in one Seigneurie, and part in another, and that he pays the whole of the cens to one Seigneur for thirty years, that Seignior has prescribed the other title to it for ever after.

Idem des dixième des cens; quantity and quality of dixmes may be prescribed, and also arrears to forty and thirty years. A Curé can prescribe another Curé in forty years with regard to dixemes.

The common opinion with regard to fiefs is that one Seigneur can prescribe another if besides the lapse of thirty years there have been three mutations followed of feudal Seigneurie.

Physicians, Surgeons and Apothecaries should institute actions within one year, for the amount of their accounts, otherwise they are prescribed, as also Bakers, Butchers and Grocers, Blacksmiths, Masons Carpenters and Coopers.

Of Retrait Lignager.

Retrait lignager is a right by

which the relation of the coté et ligne from which the property had descended to the vendor can reacquire the property to keep it in his family.

When any person alienates by sale or other act equivalent thereto his property or rente fonciere to another person not of the coté et ligne from whence the property descended, it is lawful for the nearest lignager of the coté et ligne from whence the property was derived, to demand and reacquire the said property or rente by retrait within a year and a day from the day on which the purchaser was seized thereof if held en censive, or has rendered fealty and homage if held in fief, on reimbursing the said purchaser, the price

thereof

Theory and Campbell experience.

Retrait can be exercised in the case of sale subject to redemption, the year and day commences from the day of seizure and ensaisinement.

Retrait cannot be exercised in case of donation, also in case of transaction, without circumstances warrant the supposition that the parties wished to prevent the retrait by making the act a transaction.

An inheritance descended to a collateral of ancestor and by him sold is subject to retrait.

Retrait can be exercised when the [illegible] is [illegible] agreeably to article of the Coutume of Paris. The relatives de côté et ligne concur in retrait in any degree.

A Minor must be assisted by

his tutor or curator to institute an action en retrait.

The husband can institute an action en retrait for an Estate *propre*, sold of his wife's parent, nevertheless the offer and summons should be made in the name of the husband and wife, under pain of nullity.

If a person acquires an Estate *propre de son parent du côté et ligne dont il est parent* and sells the same such estate is in retrait, in which case the first vendor can exercise retrait.

In matters of retrait lignager are due the fruits and profits arising from the estate from the period of the summons and offer of payment.

Offices are subject to retrait the

C. D.

cost that should be reimbursed in case of retrait are the quint and Lods et Ventes.

The period of the retrait commences for the rotures from the day of saisine, and for fiefs from the period of investiture or reception in fealty and homage.

In default of the seigneur's having made the necessary publication he can be evicted by the retrait lignager at any time during thirty years after the retrait feudal.

There are two cases where the retrait does not commence on the day of Saisie and saisine namely.

1st The sale of the wife's personal property by the husband without her consent, in which case the period commences only when the sale is ratified by the wife.

2nd In fraudulent sales the retrait commences.

Commences from the discovery of the fraud, but discovery of the fraud must be made previous to the expiration of thirty years from the date of deed.

The right of retrait is prescribed in thirty years, when the title deeds have not been ensaisine infeodes or published & notified.

The retrayant must pay the price and lawful expences within twenty four hours after judgment rendered in his favor, under pain of losing his right of retrait.

Property released a rente rachetable is subject to retrait within a year and a day from the saisin and infeodation or reimbursing the Capital sum and arrears due since the Summons.

The estate reacquired by retrait

becomes

lignager is so far united to the family, that if the acquirant die leaving a heritier d'acquets et heritier des propres, the said estate should belong to the heritier des propres in the line from whence the estate was formerly derived and not the heritier d'acquets in payment within the year and day of the decease the price thereof to the heritier des acquets. The present lignager who first institute an action en retrait should be preferred to all the others.

The heirs of the vendor can retrait the heritage propre of him sold provided they

Are du Coté et ligne.

An estate taken in exchange for a propre the said Estate is considered as the propre of him who got it in exchange, and if he sells it is subject to retrait.

Sale of the usufruct of an estate propre is not subject to retrait.

Leases for ninety nine years are subject to retrait.

Estates propre sold by decret are subject to retrait.

Executions and Gageries.

When the proprietor and possessor of an estate dies without heirs apparent, the Seigneur Haut Justicier in whose jurisdiction the property is situated, can adjuge the same to his own uses but the legal heirs can at any time within thirty years claim the property and inheritance of the Seigneur. Husband and wife succeed each other to the exclusion of the Seigneur.

Community.

Community of property or estate is that which is contracted between husband and wife, at the period of their marriage, and is composed of the moveable property and property immoveable, acquired during marriage. And is constituted either by express stipulation or by virtue of the custom of the place where the contracting parties reside without any express stipulation.

Every description of moveable property falls into the community, except rentes constituées, and offices which are deemed immoveables, of rentes foncières or constituées are moveable.

The Conquets immeuble acquired during marriage fall into the Community, therefore it follows that the immoveables whether Acquets or propres belonging to the parties previous to marriage do not fall into the community, neither do the immoveables inherited by the parties during marriage by succession in the direct or collateral line fall into the Communauté because they are not acquets. Idem of immoveables given in the direct line, which are deemed propres but with regard to immoveables given by strangers or relations in the collateral line, they fall into the Community.

A Minor must not Ameublir more than one third of his property in order to make it fall into the community, but the father and Mother of the girl may stipulate that reversion the price of the property which they gave her. When there is no community the parties generally agree that the purchases &c. made during marriage shall remain *en Nature de propres* to the person acquiring the same, and to the effect thereof an inventory must be made by the parties respectively, of their property, rights, titles and deeds previous to the celebration of the Marriage.

Altho' the wife brought nothing in marriage she will notwithstanding have the same right in the Community. If the husband and wife are separated *de biens* and that during their separation they or either of them acquire property acquets and are afterwards reunited, the property thus acquired enters into the community, likewise the debts contracted by them during their separation are debts of the community when reunited.

The husband is personally bound to pay the debts mobilier of the wife, contracted by her previous to marriage, but is the wife bound to pay any of the debts mobilier of the husband contracted by him before and after marriage, as far as the property and the community will extend, but if she engages herself with her husband, she is liable for the whole after his decease whether she accept the community or not.

If the wife's debts are not paid during the community, she may be prosecuted for the whole by her creditors, after the death of her husband, but the wife has her recourse against her husband's heirs for the recovery of what she has paid, in case she has renounced the community.

The husband cannot be prosecuted for the debts of his wife, after the dissolution of the community, but if the wife's heirs accept the community, they can be prosecuted for the same, having their recourse against the husband for half thereof.

It is a common clause in contracts of marriage that, the debts due by the parties shall be paid by them separately, the effect of which clause is that if the husband had contracted debts previous to the marriage, all the moveable property forming the community are liable for the same, the creditors can also prosecute his heirs for the debts, but the widow cannot be prosecuted for his debts altho' she accepts the community.

Another effect of this clause is that if the debts are paid during the community, the person who contracted them must reimburse the other the half of what it cost the community to discharge them.

Exception. The conjoined are not liable for the debts of the other, if an inventory of the moveable property was made previous to contracting marriage the wife is freed therefrom by virtue of the said clause and the inventory, and can prevent the sale of his immovable property by demanding a separation of rights and approving the sale of the property bought by her, specified in the inventory.

If the wife had no immovables the husband cannot be prosecuted for his administration before marriage.

A wife cannot sell, alienate, nor mortgage her estate without the consent of her husband, even tho' she is separated from him; cannot alienate by donation, even by reserving the usufruct.

But the wife can dispose of her property by last will without the consent of her husband.

To

the wife's obligation is null and her securities are not liable in the case. It appears by the commentators of the Custom that the wife cannot accept a donation without the consent of the husband.

A wife cannot appear in court without the authority of her husband, but she can if separated from him. A minor cannot authorise his wife to appear in judgment, but a minor can authorise his wife a major to pass and execute all contracts, cannot if she is also a minor.

A wife separated from her husband has only the administration of her property, but cannot alienate it without his consent, and if he refuses without the authority of the judge, she can lease her immoveables, grant acquittances, and oblige herself for her support, Wife though separated cannot equally obligate herself to the payment of the price of a property sold her without his authority.

Husband can dispose of the property composing the communauté without his wife's consent, provided the same is not to the prejudice of her or her heirs.

Husband cannot dispose by last will of the property composing the community to the prejudice of the part or portion that should belong to his wife therein.

In all cases where the wife renounces the communauté after her husbands decease all the moveables and conquets that he may have bequeathed shall appertain to the legatee to the exclusion of the wife's heirs.

Wife's share in the community is

not confiscated, if the condemnation
of her husband to death or—
banishment, neither is her dot,
dowrie, and the matrimonial
Community liable or prejudiced,
but if he is condemned to fine
only it is liable.

Husband is not liable for the
payment of cost, damages and
interest recovered against his
wife, by reason of a crime she
has committed.

Husband can dispose of the
usufruct of his wife's property,
without her consent, but she
can recover the same after
her husband's decease or after
Separation.

Husband can lease his wife's
property for the term of six
years if the same is situated in
town and three if situated in the country.

but for no greater period.

Lease made by tutor and curators of their minors property should not exceed this term.

If the term of a lease was renewed six months previous to the expiration of the old one and the husband dies before the commencement of the new lease, the same may be annulled.

Wife is not liable for the debt contracted by the husband during marriage without her consent, whether she accepts the community.

In order that the wife may not be liable for the debts of the community she must make a true and correct inventory of the property composing the community. If the wife accepts the community she is liable to pay half the debts

the community as far as her share
in the ſame extends.
If the wife renounces the community
she is not liable for the debts of her
husband contracted previous to
or after marriage.
The inventory ſhould be made
by the wife in presence of the
presumptive heir, and if there
is no moveable property left
by the husband to discharge the
debts, an act declaratory of the
ſame ſhould be made before
Notaries, and the Notaries must
go to the house of the deceased
to ascertain the fact from the
ſervants or neighbours.

After the decease of one of the
contracting parties, the property
composing the community is
equally divided one half whereof
shall belong to the survivor and

the other half to the heirs of the wife

The contracting parties may stipulate in the contract, that the wife's heirs shall not participate in the community.

The husband can also stipulate that the wife shall only have one third or one fourth of the communi-

If the wife abandons her husband, she forfeits all rights to any share in the community.

There are likewise other cases in which the wife or her heirs do not take part in the community;

1st when at the day of decease of one of the parties, they are separated de biens.

2nd when the wife or her heirs renounce the community.

3d, when there is a stipulation in the contract, that the widow or her heirs shall not take part in the community or in lieu of all rights thereto, they shall be entitled to a certain sum.

4°. When the wife has been convicted and condemned for adultery.

The wife or her heirs accepting the community are liable to pay half the debts thereof.

The funeral expenses of the deceased should be paid by his own heirs, and are not debts of the community.

The half of the Conquests thus inherited by the heirs of the deceased is the proper inheritance of the said heirs, in such way that if the said heirs, die without heirs of their body the said half will return to the nearest heir of the côté et ligne from whence the said half thus devolved, of which as respects the father and mother grandfather and grandmother—

[illegible]

heirs succeed to and acquire the conquets being their natural heirs, consequently if the child succeeds his mother in said property and dies without issue having a brother and a maternal cousin, the maternal cousin should be preferred to the brother, in the succession of conquets, the which are propres naissant maternal to the child to whom they fall by inheritance of his mother, and should therefore return to his maternal heirs.

It is likewise the case of the propres fall to the grandchild, in which case in order that the collateral heirs should inherit, they must be of the cote and ligne party to whom the property was conquet.

The produce of the Estate

Propre

Fruits pendant par les racines at the time of the decease, belong to the person who inherits the said Estate, but he must pay half the expense of cultivation, And in case the wife or her heirs renounce the community she or they must pay the whole [illegible] to the community.

If during the marriage an estate or rente propre belonging to either of the parties is sold, the price thereof can be taken out of the community previous to partition, by the person to whom it belonged, and if the property composing the community is not sufficient to pay the same (if it belongs to the wife) she can come upon her husband's properties for the whole or the balance. A married woman cannot oblige herself without the consent of her husband.

husband, that is in case she is not in effect separated from him or a trader or a public trading independent of her husband, but in which case being Marchande Publique she can bind herself and her husband is also liable for all her acts touching or in anywise relating to the business she carries on, but if there is no community he is not at all liable.

A wife can bind and engage herself to get her husband out of prison.

A wife can bind herself to the payment of the dot and matrimonial conventions of her daughter.

She can also bind herself as far as regards the maintenance and support of herself, her husband, children, father and mother.

She can also oblige herself for

the necessary expenses incurred on her property, and also when the marriage is secret.

A minor husband can authorise his wife to alienate her property, and to bind herself.

A major husband can authorise his wife a minor to bind herself, but cannot authorise her to alienate her property without an order from the judge.

In all cases the wife or her heirs are bound to pay the debts which she bound herself with her husband to pay altho' she or they renounce the community.

She cannot accept the community sous benefice d'inventaire, this is a right vested in the presumptive heir only.

The right of renouncing the community cannot be restrained by any express stipulation.

stipulation in the contract of marriage.
Act of renunciation must be
made before Notaries.

The effect of renunciation is that
the wife loses all right to her part
in the community and the property
she may have brought thereto at
the time of her marriage or that
may have fallen to her by succession
Mobiliere, donation or otherwise,

provided always there is no clause
in the contract stipulating that if
she renounces the community
she shall be entitled to the portion
which she invested therein, by the
omission of this clause she loses
the right, a Minor however does
not loose her rights by this omission,
and will be entitled to take two
thirds of what she brought in marriage,
that is if she renounces the community.

But this clause does not extend to the property acquired by the wife during the marriage, by donation from a stranger.

In order that the heirs either direct or collateral may avail themselves of this right of reprise, mention thereof must be made in the clause; there is one case where the collateral heirs can demand this right when the clause of reprise is only made in favour of the wife and her children, namely.

When the child survives his mother and dies in minority, in this case the collateral heirs on renouncing the community may have the reprise.

The creditors have the privilege of renouncing the community, in case the husband and wife abandon all their property to them.

the espouse precede the donor decease the husband cannot legally by any act do away with property as an usufructuary of the property left to him after his death, and this prohibition will not discharge the wife therefrom.

Man and woman are emancipated under suppression of their rights when married so far as regards the administration of their property, but they cannot alienate their immoveables until of age.

There are several cases when a minor can bind himself namely.

When the obligation is towards he has been released by the payment of which he is liable to imprisonment.

When it is for the purpose of getting his father out of prison.

When a minor has bound himself the obligation is legal, but in case of land, restitution must be made, whence it follows if the act is ratified in majority, the mortgage takes effect from the date of the obligation.

Continuation of Community.

When the survivor of the conjoints has not made an inventory of the property composing the community or that he made it sans un legitime contradicteur, the children in common issue of the marriage, can if they please demand the continuation of the community that existed between the father and mother, between them and their surviving parent, or they can demand the partition of the community as it was at the time of the death of the predeceased, this is in case the community was not dissolved at the death of the deceased by means before mentioned manner, separation, abandoning husband, adultery &c.

To effect the continuation of community it is necessary to make an inventory, the inventory should be made in the presence of competent persons, and in that of any minors in the presence of their tutor, if the surviving parent is their tutor then in the presence of a sub tutor, and by him signed, otherwise the act will be null.

If the continuation is demanded by the minors, the majors will also participate in the profit thereof, the majors alone cannot demand the continuation.

The community having continued on account of the minors it does not cease on their attaining majority; the right of continuation having been demanded the continuation is transmissible to the heirs of the deceased child, as to his universal legatees, and to his creditors, it is also transmissible if not demanded, because the community continues in full force in default of an inventory.

The principal effects of the continuation of the community is that all the moveables and conquets immoveables made during the marriage and also the moveables that fell to the survivor or that he acquired during the continuation, are in common between him and his children of the marriage.

In the continuation also fall all the profits of the estate and property as well propres as acquets belonging to the survivor, and also of the estate belonging to the community.

When the Survivor marry again having continued his first community in the continuation will fall. the Moveables and Profits accruing from the estate belonging as well to the Survivor as to the second husband or wife, with also the conquests made during second marriage, and what the second husband and wife brought into the community.

The Moveables and Conquests made by the children during the continuation of the community, if they live separated from the Survivor do not fall into the the community, but belong to the children who acquired them. The particular debts of the children do not fall into the community, because their propres and acquets do not.

The surviving husband and wife cannot dispose at his pleasure of the conquets made during the continuation thereof, because the children acquire in the first a right of property, since the decease of the husband, and if he alienates those of the first communaute, the children have their recourse against the purchasers in case they renounce the continuation of the communaute but if they accept they lose their right of Action.

By an Arret of 6 in 1616, it was adjudged that a donation made by a second wife, to her husband who had continued his first com=munaute, should not enter into the continuation, it being

free

been adjudged, that the eldest son Could not take preciput, or droit d'ainesse, from the property acquired during the continuation.

For the dissolution of the Communauté, the inventory should be made, and closed within three months thereafter, otherwise the communauté is continued, if the children please.

To be Complete the inventory must be signed by two notaries.

In order to dissolve the Community, it is not sufficient that the inventory is made, but it must also be closed.

If the survivor marries

again, and the said Community is continued, each, namely, the Children, husband and second wife, are entitled to a third, if the wife has also children of a former Marriage, the Communaute is then continued by fourths, but this only is the case when an inventory has not been made.

It is a question whether the second wife can pretend to any right in the Acquets and Immoveables, during the first Communauté and the continuation thereof acquired, previous to the second Marriage, it has been adjudged by the late Courts that the Acquets of the first communauté or the propre inheritance of the children to return to their heirs du coté et ligne, consequently, should not enter into the new Community, moreover the community should only be composed of movables, therefore it follows that the conquests and immovables acquired during the first marriage, and during the widowhood, should be divided between the survivor and his children of the first wife, but the conquests made during the second marriage with all the movables composing the second community, should be divided between the husband and wife and children of former marriage.

The continuation of the Communauté during the second marriage can be objected to by the second wife.

wife or husband.

The acquets made during the first community are the propres naissant of the children but those acquired during the continuation are acquets in their persons.

If any of the children die, the survivors will still have the same share in the community, and the surviving Father and Mother, by virtue of the continuation are excluded from the succession of their children, until the death of the last surviving child, which is a remarkable exception. Po 313 314 art.

Rentes due by one of the conjoined previous to marriage and acquitted during the marriage is reputed a conquet, so that the person charged with the rente or his heirs after the dissolution.

dissolution of the community are obliged either to continue half of the rente, from the period of the decease, or retain from his share in the community the half of the rachat.

If the rente is the wife's and she renounces the community, she should make the rachat entire of the rente to the heirs of her husband.

The expences laid out on the properties of one of the conjoined, should be deducted from his or her share in the community. The heir or the possessor of the estate subject to the rente is bound to continue the half of the said rente, and pay the arrears from the period of the decease until the entire redempt.

To explain this more fully, I suppose the husband owes on the day of his Marriage a rente Constitue of 10,000 livres, And that he repurchased the same during the Marriage, the wife or her heirs, on the dissolution of Marriage, accepting the community have a right to take a like sum of 10,000 livres out of the community (if so much there be) either in money or other effects, and should that not be sufficient, the person who was charged with the rente is bound to continue half of the said rente as above, but should there be sufficient, the person who ought to be reimbursed the part of the Prix du Rachat. is not bound to accept the continuation of the same.

An immoveable given to one of the Conjoined during Marriage on the Condition that it should be propre to the donee, does not fall into the community, but if it is simply given to one of the conjoined, it falls into the community, excepting donations made in the direct line the which do not fall into the community.

Property given to one of the conjoined by contract of Marriage, are propres of the donee, and do not fall into the community.

It is legal to insert the clause that the propres acquired by either party in the direct line or otherwise shall fall into the community.

If a donation is made by a son to his father, of an estate derived from him, it seems just that it should not fall into the community, but if the property given is acquet, it falls into the community.

What is given in the collateral line is acquet and not propre.

A donation containing the clause, that the thing given shall be, in nature of propres to the wife and to her heirs of her cote et ligne does not prevent the wife's alienating the same and she is not liable to restitution.

Dower.

The dower is a donation which the husband makes to the wife, by contract of marriage, consisting in a certain sum of money, rente, or Estate, to be enjoyed by her after his death, for usufruct, or in full property, (if so stipulated by the contract of Marriage) in case there is no child or children, issue of the Marriage.

The dower is either Coutumier or prefix.

The douaire coutumier is the usufruct of one half of the property which the husband possessed at the day of the Marriage, and of those inherited by him in the direct line during the Marriage.

The douaire prefix on the contrary is a sum of Money, rente, or estate, belonging to the husband, to be enjoyed by the wife for usufruct or in full property as above.

4/.

The Douaire Coutumier and Prefix, being the property of the children, cannot be alienated by the husband or wife, except a la charge du douaire; both these dowers consist only in the usufruit thereof to the wife, the property being vested in children as heirs of the husband, but if the husband dies first leaving no children, the dower can be vested entirely in the wife by a stipulation to that effect in the contract; children have a tacit Mortgage on all their fathers property from the day of his marriage, for the security of the dower.

The husbands property are charged with the payment of the douaire prefix, and if there be not sufficient then his share in the Communauty is liable.

The douaire Coutumier is constituted in favor of the wife, & the disposition of the law, in case mention thereof has not been made in the contract.

The wife can renounce her right to the douaire, but this does not prejudice the right of the children.

The douaire préfix and Coutumier are similar in several instances, as when the wife has the usufruct of either one or the other, during her natural life, they can be vested entirely in the wife, in case there are no children & stipulation in the contract.

The douaire préfix and Coutumier

belong to the children without preciput or droit d'ainesse.

Whoever demands the dower must renounce the succession.

The douairière should report to the father's heirs and creditors the advantages they derived therefrom.

The dower does not take its full effect untill after the decease of the father and Mother.

The dower is given to the wife à sa Caution juratoire; but if she marries a second time, she is bound to give good and sufficient security for the same.

The wife looses her right to the dower if guilty of adultery.

The dower does not extinguish

the dower.

Prescription of dower commences from death of the husband (art 117.)

the don mutuel does not prejudice the dower.

The douaire coutumier and prefix differ in some cases namely.

The douaire coutumier is constituted by the mere dis=position of the law, whereas the douaire prefix is constituted by convention of the parties.

The children can evict the purchasers of property mortgaged for the douaire coutumier, by holding the dower and renouncing the fathers succession, but for the douaire préfix consisting in a sum of money, they have only an hypothecary action for the recovery thereof.

The mortgage for the douaire préfix commences from the date of the contract, passed before notaries, whereas the douaire coutumier commences only from the celebration of the marriage, the douaire préfix in money is moveable in the persons of the children altho' not yet paid, consequently the mother succeeds to it, but the douaire coutumier is a propre ancien ou naissant, as emanating from the fathers property to which the mother cannot succeed.

The wife is bound to pay the [illegible] if she takes the dower coutumier and also to make reparations viageres, but in case she takes the douaire prefix, she is not bound for anything.

The douaire is due although the wife brought nothing in marriage, or in case the dot she was promised has not been paid.

In a contract of marriage the clause stipulating that the wife shall not have any douaire is lawful, but it must be express, otherwise the douaire will take place, for instance; if the contract states that for all rights as well in the community as others she might claim from the property of her husband, in case she survives him, she shall receive a certain sum, she would not by this clause be

deprived.

the provisions of the Paris Custom.

It has been adjudged that the wife can renounce legally her dower by her contract of marriage, and that the children in that case can pretend nothing thereto.

It appears reasonable if the husband has no immoveable property to satisfy the dower at the time of his decease, that the wife has a right to her dower out of the moveables and conquests composing her husband's share in the community and that a fourth of that share should be allowed her as usufruit.

The wife is deprived of her dower right in community and other matrimonial conventions, if guilty of Adultery, but the accusation must be by her husband, his heirs cannot after his decease; but if the heirs prove she has been guilty of lewdness, incontinency during the year of her mourning, she will lose her dower and other conventions.

The dower coutumier is the usufruct of the half of the property belonging to the husband at the time of his marriage, and also of half of the property acquired by the husband in the direct line belongs to the wife, but not the right of property thereto, which belongs to the children or the husband's collateral heirs; this right cannot be taken from the

the children of the contract of marriage, but with regard to the collateral heirs it may be stipulated that right of property belonging to the wife to their exclusion.

If the dower preffix is stipulated to be the same as the dowaire coutumier, then the preffix will in every respect be regulated as the coutumier.

Because there is not sufficient property to satisfy the dower, the remainder may be taken from the property given to the husband and not entailed to his children, and if he marries a second time, having children of his first wife, the second wife shall have no right to that property for her dower, but will in case the husband leaves children by

The first wife.

Seigniorial rentes, rentes foncières and rentes of estates and de rentes constituées, are subject to the dower, but not obligations and other active debts.

If the rentes possessed by the husband on the day of his marriage have been reacquired the money accruing therefrom is subject to the dower.

To constitute the dower the marriage must be lawful.

But if the woman contracts matrimony with a man in good faith, who is married already, she does not forfeit her matrimonial rights.

A husband cannot renounce a succession to the prejudice of his wife's dower.

Children cannot dispose of their share in the dower of [illegible]

Th.

to the death of their Father.

The dower belong to the Children
on two conditions only;
1st That they survive their Father and
2nd Renounce his Succession.

The Children cannot renounce the
dower during the life of their Father.

The dower also is proper to the
Grandchildren as representing
their father and Mother.

If the Children renounce their
Fathers Succession, and take
the dower, the same will
belong to them purely and simply,
without being liable for the debts
proceeding from the acts of their
father during his marriage, but
are liable for his debts contracted
before marriage.

Disinherited Children have no part
in the dower, but if the disinherited
dies before his father leaving children

The children can demand the dower, but right of ainesse is allowed to the eldest son.

None can be heir and dowarier at the same time, these rights are incompatible with each other, because the person demanding the dower, does not demand it as heir, having renounced the succession, but as a right vested in him by the contract of marriage as a condition, and the person accepting the succession, cannot demand the dower.

Whosoever wishes to have the dower, should deposite what he has received in marriage and other advantages from his father before the father marries second times the dower Coutumier of the children of the first marriage is half of the immoveables possessed by the father at his first marriage and also the half of that which fell to them in the direct line during marriage.

The dower Coutumier of the children of the second marriage is the quarter of the said immoveables, together with half of the conquests acquired by the husband during the first marriage and half of the donations made by him after the dissolution of the first marriage until the [illegible] of the second marriage and the half of the immoveables that fell to him in the direct line during the second Marriage.

The dower of the children of the

first Marriage is preferred to the legitime of the children of the Second Marriage and likewise to the settled dower of the Second wife.

If the children are heirs to their father by accepting the community they [illegible] the dower prefix stipulated to their mother's Ancestors, in that case the wife may dispose of her dower as she thinks proper.

The wife cannot alienate or engage her dower prefix to the prejudice of the rights of [illegible], vested in her husband's collateral heirs that is when there are no children and the dower not stipulated [illegible].

The wife has the usufruct of the dower customary and prefix from the heirs or their representatives.

The dower gives the wife the right to half of the fruits, growing or were ripe on the estate subject to the douaire coutumier, at the time of the decease of the husband, on reimbursing half of the labor in cultivating thereof, with regard to rents of houses and arrears of rent, they are due pro rata at the time of the decease. The wife endowed with douaire préfix during marriage, & douaire mutuel, she enjoys the usufruct of her husband's immovables and acquests, and takes her dower from the surplus of her husband's property, without any diminution.

Children do not acquire full and entire right to the dower until the father and mother are dead,

[illegible]

because if the father dies first, his widow has the usufruct thereof during her natural life, and if the mother dies first, the father has the same right but in both cases the right of property is always vested in them, and yet they cannot dispose of that during their father's life, for this reason, that it is not a right positively acquired, and may be extinguished by the accepting his succession.

The dower is due to the children only in case they survive their father, and that they renounce his succession. All contracts made secretly, and not in the presence of the parents and relations who assist at the contract of marriage are null.

But the husband can at all times, recall his wife to participate in the community which she was before excluded from, reserving this right in the contract of Marriage.

Douaire Coutumier being the propre of the children should therefore on their decease, being to the lineal heirs, but the dower being a sum of Money, having descended to the children loses its nature of Immoveables and at their decease belongs to their nearest heirs & collaterals both paternal & maternal.

A wife is not obliged to renounce the community in order to enjoy the dower.

A wife endowed with a dower prefix by contract of Marriage, may afterwards choose the dower

Coutumier.

continue in preference; but this right of choice must be reserved in the contract of marriage, and when once this choice is made she cannot alter it, except the choice was made during her minority; if she die before she makes her choice, the same right is vested in her heirs, that is to say children.

The wife endowed is obliged to keep the estates in good repair.

The dower whether in commodities, rente or money, returns to the husbands heirs after her decease, and provided there is no clause to the contrary.

At the death of the dowager the produce of the estate still hanging on the trees and by the roots and also the standing crops, belongs to the husband's heirs, without the wife's heirs having any legal claim thereto, they have no claim either to the cens, or rentes foncières, if the period of the payment of the same has not expired previous to her death, but they must reimburse the douairière heirs the expence of cultivation, with regard to the civil fruits as rents of houses and arrears of rente constituée they belong to the heirs of the douairière pro rata of the time expired at her death.

Of Garde Noble et Bourgeoise.

During the garde noble, tutors and curators are elected if necessary to institute and defend actions, real and personal, other than those relating to the profits arising during the garde noble, that is in case the guardian ad hoc is not elected tutor or curator himself, in which case he is competent.

Donations.

A donation inter vivos is made by one person to another from a true spirit of liberality or particular regard, without any direct cause for the same, or without being urged thereto by the fear of something that is to happen. A donation by reason of death, proceeds from the same spirit of liberality, but is done after death, therefore a donation in this manner, only takes effect after the death of the donor.

With regard to the form of donation inter vivos it consists in the consent of the donor and donee. The same is the donation [illegible]

be.

is null, the acceptance of the donation is necessary, being by the donee, and if there are two donees one cannot accept for the other, and until accepted by the donee, the donor can revoke it, and if the donor dies before it is accepted, it is null. Acceptance is not necessary in contracts of Marriage, when there are donations.

Donations made to the wife and accepted by the husband are valid.

A tutor can accept a donation for his pupil, without *avis de parens*; so can a father for his children, grandfather can also accept for grandchildren.

If the father make a donation to his minor children, the [illegible] be invested to accept the donation.

Donations entre vifs must be made and acknowledged before notaries, otherwise they are null, they must also be insinuated in order to legalize them.

The person must be of age, in order to give his movables and immovables, but to give his movables only, it is sufficient the donor is twenty years of age, provided he is married or emancipated; the person is emancipated that obtains Chancery letters, granting him the administration of his property which should be confirmed by the Judge.

The donor must also be of sound mind and understanding.

A wife cannot give without the consent of her husband.

He.

A donor may give his moveables and immoveables, or a part of property, but if the donor has children their legitime should be reserved to them.

It is a question whether a donation of all his property present and to come is lawful, if the donee accept this donation the opinion is that he is bound for the payment of the debts contracted since the donation by the donor.

Persons unable to receive donations are Madmen, persons guilty of incest, Adultery, and concubinage, also persons that are civilly dead, likewise the conjoined in marriage, who cannot advantage themselves by donation during marriage, except by Don. Mutuelle.

Donations made indirectly by minors to the profit of their tutors and curators

or administrators are null until
the tutors and curators have read
their account.
Masters cannot receive donations
from his servant.
Medical men cannot from their
patients when sick.
Advocates cannot receive from their clients.
Minors can give to their parents,
grandfathers and grandmothers,
altho' they are their tutors, curators,
provided they do not remarry.
Donations a causa de mort are
those made in sickness of which
the person afterwards dies, and
is therefore deemed testamentary by
which donations the donor can-
not give what he could give by
last will, namely, all his movables,
acquets and conquets immoveable, and
the

the fifth of his property. To the prejudice of his collateral heirs. Movables or immovables given by Father or Mother to the children are held to be given in advancement d'hoirie although no mention thereof is made in the donation, this rule extends to all the other ascendants, this advancement should therefore be dedicated from the Childrens share in the future succession.

A woman marrying a second time, having Children by her first husband, cannot advantage the second husband with her properties and acquets made during her first Marriage; she cannot dispose of them in any manner, to the prejudice of the children portion, which the children have a right to from their mother; neither do the children of the second marriage inherit equally with the children of the first marriage in the said conquets, as also the children of the first marriage succeed to a portion of the conquets made during the subsequent marriages, in all cases if the marriage is dissolved or that the children of the first marriage are discard, the wife can dispose of the conquets as her own;

But the wife can advantage the second husband with the moveables that she acquired from the first community.

Don Mutual.

Man and wife may make donation mutual the one to the other reciprocally and equally of all their Moveables and conquest immoveables only acquired during their marriage which either of them may possess at the time of his or her death and which are in common between them at the time of the decease of one of them, to be enjoyed by the survivor by usufruct during his natural life in case there are no children.

If the Don Mutuel is made by contract of marriage, it may be stipulated sans retour, and to be the entire property of the survivor, to the exclusion of the heirs of the deceased. Insinuation is required when the gift of the don mutuel is made after marriage, but not if made by contract of marriage.

if at the death of one of the par[illegible] there are children living, the donation becomes null, but takes its force again if the children die during the life of the donor, it being presumed that the condition *si le* [illegible] *in an* [illegible] *a* [illegible], was inserted therein, therefore if the donation is made after marriage during the life of the children, issue of the marriage, the donation will [illegible] be considered [illegible], if the children die before either of their parents [illegible] the [illegible]. If there are children living at the time of the decease of one of the parties, and they die a short time after him the donation does not retain its force, because the donation is actually annulled by the children living at the time of his death, who having succeeded to him in the property subject to the destination and the same becoming *propres naissant*, in their possession, going to their heirs of the cote et ligne.

The donation is also null if there are children of the first marriage living at the time of the decease of one of the parties.

Premier Mourant, signifies the natural death of one of the parties, not the civil death.

Don Mutuel must be made and acknowledged before Notaries and the parties must be in perfect health at the time of passation.

It is a question if the contract of marriage declares there shall be no community, and that the wife or his heirs shall have as

a tiers.

certain sum in lieu of all rights therein, whether the don mutuelle takes effect, it was decided in favor of the wife.

The wife having renounced the community, the Court has decided that she can avail herself of her don mutuel.

Father and Mother marrying their Children may stipulate in contract of marriage that their Children shall allow the survivor of their father and Mother to enjoy par usufruit the moveables and conquêts immeubles belonging to him or her in common between them at the period of his or her death, this stipulation cannot be made with regard to the propres, and there must also be a community between father and Mother when the stipulation is made; in all cases where there is no community the stipulation cannot takes effect, the usufruct this stipulation cannot extend to grand father and grand mother, the stipulation is not allowed but in the case where the father and mother advantage their Children in some other respect. When the partition of the community is made under these circumstances, it is done in this manner, suppose the Child received 10,000 livres at his marriage this of course will be deducted from his share in the community, say 5,000 from the fathers share, and 5,000 from the mother, and after the decease of either the father or mother, but the [illegible] share in the community as heir to the deceased is 8,000, livres, consequently

he.

the child is entitled to receive only 3000 livres out of the property composing the community, which 3000, livres will be enjoyed by surviving parent during his or her natural life, by virtue of the stipulation before mentioned, the other 5000, will be deducted from what the child will have to receive from the [illegible]. But the usufruct thus reserved can only be enjoyed so long as the survivor does not marry a second time.

Man and wife cannot advantage each other either by donation entre vifs, testament or otherwise directly or indirectly except by donation mutual made in the due form.

Therefore a legacy made by one of the parties to the other is [illegible]

To the marriage [illegible] after the marriage.
[illegible] Maxim that no person
Can renounce a right not yet acquired.
The Conjoined in Marriage cannot
give to the children of the other of
former marriage.

U Don Mutuel is a [illegible] and
should be consummated within the
limits of the contract of the marriage
after the consummation it cannot
be revoked without the consent
of both parties.

Notwithstanding the don Mutuel,
the husband can then dispose as
his share of the property in the
Community as he thinks proper,
during his lifetime, because the
don mutuel only contemplates what
the property may actually be at
the time of his decease.

The property [illegible] in the [illegible]
of the don Mutuel in [illegible] husband

in course of law, by him or her
from the heirs of the deceased.
Donations are null if not insinuated.
Dower given to the wife is not
liable to insinuation, neither
is the dot by contract of marriage;
with regard to insinuation see
Article 284 of the Coutume.
All insinuations of donations
should be made within four
months from the date thereof,
in pain of nullity, if the
donor is deceased it cannot be
insinuated after the four months.
However the insinuation may be
made by the wife surviving her
husband, within four months
after his decease. [illegible] made it
was not done in time, and the
husbands heirs should [illegible].
The dower mutual, does not
enjoy the fruits or profits of
the

the property given, until he has given sufficient security, to the heirs of the deceased and if he or she cannot give security, the property should be administered by a person duly appointed for that purpose, who will render the profits thereof to the donee, that is of the immoveables, but the moveables must be sold and upon the price thereof be such manner as to render the usual profits to the donee.

Donee mutual is bound to advance and pay the funeral expences of the deceased and also to pay the half of the debts of the community, due by the deceased, all which should be deducted, and paid to him from the deceased's share of the community, but the donee mutual is not bound to pay the legacies or other testamentary bequests. By two arrets it has been adjudged, that the widow can renounce and demand restitution against renunciation of the [illegible] [illegible]. The douairiere is bound to make reparations viageres, agreeably to the Art. 201, C. L. And pay the cens and annual charges and arrears as well of *rentes foncieres* as of the *rentes* constituees during the marriage. With regard to the rentes constituted by the deceased previous to marriage, they should be acquitted by his heirs, because they are not debts of the community.

The heir cannot demand an estimation of the [illegible] and [illegible]

it.

of that made of the inventory, in doing which the donee [illegible] shall have the use of the movables without being obliged to sell them.

Testaments.

A Testament or Will is a solemn declaration, that a person makes, of what he desires or wishes to be executed after his death;

Which in order to be legally executed and to have full force, should be written and signed by the testator, in presence of two notaries, or before the judge of the parish where the testator resides, with the [illegible], or one notary, or before the said Judge and [illegible], and three witnesses, must be dictated and named by the testator to the said notary, notaries, Judge, or

or Vicar, afterwards read to him
in the presence of the said Nota-
ry, Vicar, or [illegible] and two witnesses,
and the testament must mention
that it has been thus made,
dictated, and named by the
testator and read to him twice,
and it must be signed by the
testator and witnesses, and if
they did not sign, the cause
thereof must be mentioned
in the will.

Witnesses must be males, of
age, and not relatives of the
testator (the custome say
they must be aged twenty to
be witness to a will) they must
be of sound understanding and
not guilty of perjury, nor dead
against the law, that is in the
eye of the law.

There are two kinds of testaments,

Olograph.

Olograph and Solemnel

Olograph testaments are those written and signed by testator, therefore if it is written by another in presence & signed by the testator it is void, but as this testament requires no other formality the testator must declare therein that it is his testament, date, and mention of place where made is not necessary to this testament.

Solemnel testaments are those passed before notaries. Notaries & witnesses. The witness must not be legatee, under pain of nullity.

As the will must be dictated to the notaries, the will must be written by one of them, in the presence of those person.

c.

A will must be written in words at length; a will was declared null because it did not contain the words dicté et nommé, it must also be lu et relu and mention thereof made on pain of nullity.

The date is an essential requisite to a solemn will.

Notaries should sign in the presence of the testator.

Proof cannot be received against a will that appears to be executed in due form.

Wills made by a person in a foreign country according to the laws thereof are legal with respect to the disposition of the property situated in Canada.

Any person of sound mind, and understanding, of age, and in possession of his rights can make a will.

Married women can make wills without authority of husbands.

All persons are capable of receiving by testament, except those excluded by law, such as persons dead in the eye of the law, who cannot receive by testament or otherwise except for their maintenance and support.

Strangers cannot receive by testament, Art 276. 280. 283. & 289. C.P.

Persons [illegible] can dispose of all their property moveable and immoveable, acquets and conquets immoveable, and the one fifth part only of their propres, reserving the right of legitime to his children, that is in case the testator has not any children, because otherwise he can only dispose of one fifth of all his property, as well as propres rentes foncieres and constituées, are reputed immoveables as well in successions as in the cases contained herein of the four fifths, in favor of the heirs.

Money stipulated propres, by contract of marriage may be disposed of by will the same as moveables.

Disposition of moveables by will must be regulated by the laws of the place where the testator resides, and of immoveables according to the laws of the country where they are situated. The disposition of moveables acquits and conquets immoveable, the person must have accomplished the age of twenty years, and to dispose of the fifth of the propres, must be of age. But if the testator has no moveable acquets, and conquets immoveable, he can dispose of the fifth of his propres at twenty years. If the heir to the propres, contents himself with the four fifths thereof, which the testator could not dispose of to his prejudice, he will remain charged thereof, and declare to the legatees, that he abandons all the other property to them, that is to be understood, in case the heir to the propres, is also heir to the moveables and acquets, otherwise he could not abandon what is not his.

the debts should be paid out of the entire mass of the succession, so that each heir and universal legatee, should contribute his part thereto, in proportion to the part they derive from the succession, they are also obliged to contribute in like manner to the payment of the funeral expenses and the dowries coutumier and prefix. The husband cannot dispose of the immoveable property and conquest immoveables in common between him and his wife, to the prejudice of his wife, or to the prejudice of her share in the community.

The testamentary executors are seized of the testator's moveables for the accomplishment of his last will, for a year and a day after his death, or from a year and a day from the period that they get a knowledge of the will. The legatees of the moveable and real property, demands the same from the executors, which is an exception to the rule that, the heir is seized of all the property, from the period of the decease.

A Married woman cannot be an executrix, but a single woman can.

Minors can be appointed executors.

An Executor is obliged to make an inventory of the deceased's property, in presence of the heir, or after due notification to the heir, he may proceed with the inventory, alone

[illegible]

sell the same (moveables) in the usual way for cash, to be by him applied towards the accomplishment of the testators will and after the year and day expired should render an account of his executorship to the heir and pay him the balance that remains in his hands. If the moveables are not sufficient he can oblige the heir to furnish the deficiency, or sell the immoveables.

The Legitime is the half of such part and portion that each child would have inherited in their father and mothers, grandfather and grandmothers succession, or other ascendants, if the said father and mother and other ascendants had not disposed.

disposed of any of their property by donation inter vivos or last will, after deducting the debts and funeral expenses.

The legitime is taken from the property which the father and mother could have disposed of by donation or last will, and does not take effect till after the death of both.

The legitime in pays coutumier, is not due to the ascendants.

Children cannot renounce their right to the legitime ~~[illegible]~~ prejudice of their creditors. Legitime should be taken from the land and estate of the succession, and not in money or other movables.

The right of legitime [illegible] the demand is [illegible] the right [illegible] that if the children demand one of their rights, they can demand the whole, there is this difference between the right of legitime and dowry, the right of legitime can only be diminished by the heirs accepting the succession, whereas the dowry can only be demanded by those renouncing the succession. Action for legitime is prescribed if not brought in thirty years.

4. Legitime is regulated according to the number of the children accepting the succession, whereas [illegible] not exactly, though the legitime of the children accepting is increased by those renouncing, which is not the case with the dowry, that does not increase. Donations inter vivos made by the father or mother, are liable to abatement.

retrenchment for the legitime only in case the property composing the succession is not sufficient, in which case all the donees must contribute in proportion to the emolument they have received, to make up the children's legitime.

Succession in direct and Collateral line.

Legitimate successions are divided into direct and collateral, the direct is again subdivided, viz, the first is from the ascendants, to the profit of descendants, and the second, is from the descendants to the profit of Ascendants.

With regard to the property composing successions, one description is propres, the other is moveables and acquets immoveable.

as in quints & immoveable property,
known as feudal and the rotures.
The rights of heirs are even and
equal in roture property, but
in feudal property and noble,
there is great difference, between
the rights of the elder and younger
children in the direct line, and
between the males and females
in the collateral line;
no person can be heir and
universal legatee of a deceased
at the same time, excepting it
be in different descriptions of
property, thus the heir of the
propres paternels, can be
legatee to the moveables and
acquets immoveables, and the
quint of the propres maternels;
no person can at all times be
a donee entre vifs, and heir in
the collateral line, because in

the collateral line the property is not subject to reserve as in the direct line.

Children heirs to the deceased succeed equally in their succession except in property held in fief, or primogeniture noble, which is regulated under the head of fief.

Father and mother cannot by donation inter vifs testament or otherwise, advantage their children coming to their succession, one more than another, so that if any of the children have received anything by donation and from parents, and that they accept the succession, the amount received will be deducted from their share in the succession, but if the said children renounce the succession, they retain what they have received,

[illegible]

subject however to the right of
contributing to make up the legitime
of the other children, in case there
were deficiency of other property.

Le droit de rapport pour moitie,
in succession of the father and
mother.

If the donee at the time of the
partition has property in possession
belonging to him, he is allowed to
deposite the same, or take the
property of the succession of
similar value and equally
good, and making the said
rapport, he should be reimbursed
by his coheirs, his necessary and
useful expenses, in case the
coheirs will not reimburse the
expenses then he may rapport the
value of said property at the time

of the partition, deducting first the expenses.

What has been given by the grandfather or grandmother to their children's children of the heir without distinction, should be rapported in common by the father and mother to the coheirs, so that the one that has not received any advantage from his father is obliged to rapport what has been given to his children, this must be understood in the direct line only, because in the collateral line there is no rapport, in the collateral line the two qualities of heir and donee are compatible, in the same succession, Art 301. C.C.

A remarkable exception to this article is when the father of the donee is under the necessity of demanding his legitime, because in this case as heir he cannot demand it but as heir, nevertheless what it has been given to his child by the grandfather is not subject to rapport, see Art 307. C. Paris.

The right and share of the child that abstains from and renounces the succession, falls to the other childrens heirs, but without any prerogative or right of Ainesse in the share that falls to them.

Father and mother succeed their children born in lawful wedlock, if they die without leaving heirs of their body, in their moveables, acquets and conquets immoveable, and in default of father and mother succeeding, the grandfather and grandmother succeed.

The conquets spoken of here are the conquets made by the children not those made by the father and inherited by the child, because those are *propres naissant* to the child.

Natural children do not inherit, in succession in the direct line, *propres* do not ascend, therefore cannot be inherited by the father or Mother Grandfather or Grandmother, the *propres Maternal* of his deceased child, and vice versa;

there are three exceptions to this rule. 1st when the father and Mother, or other ascendants, are of the *estoc et ligne*, succeed to the exclusion of the brothers and sisters uncles and aunts of the deceased.

deceased child as heirs of the ligne as being nearer in degree.

2nd When the relations of the ligne fail, in which case the father and mother succeed as being nearer in degree.

3rd If one of the future conjoints, gives the other an estate, by contract of marriage, after the decease of the donee, the estate falls to the children, and they die before the donor, in this case the donor succeeds to this property, at the death of the last child, Nevertheless if the donee die leaving no children, the property goes to the collaterals, for this reason, that the conjoined in marriage, cannot succeed each other.

In all cases ascendants succeed to the property given to their children.

Children, if they die leaving no issue, to the charge of paying their debts.

If the donor dies leaving children the property given to one of them, and if this one also dies without issue, leaving brother and sisters, the brothers and sisters will succeed to the exclusion of the donor who in this case is their grandfather. If it is stipulated in the contract of marriage that the dot given by the girl's father and mother should be to her in the nature of propres without any other clauses, in this case, the father as heritier legitime de sa fille inherits the dot, that is if she leaves no children, but if the girl dies leaving children, they succeed her, and

the

that they all die before their father and grandparents, the children's father succeeds them in the same stipulation, preference to their mother in the succession of the grandparents, Altho the children die in minority. If the stipulation say to her and heirs, in which case if the mother dies leaving children the father succeeds the last surviving child.

If the stipulations to her and heirs of her *cote estoc et ligne*, in this case, the father surviving his last child cannot succeed, but the collaterals are preferred, And if the grandfather and grandmother who made the stipulation are living they will succeed, and in so far as they succeed, they are bound to pay the debts.

debts in proportion to the emoluments they derive.

If at the time of the marriage of the child the grandfather and father are living the grandfather is only intitled to take half of the Sum stipulated promised and the other half should belong to the collateral heirs of the child on the Grandmothers side.

If the sum is given with Stipulation of remploi, And the remploi not made the father nevertheless succeeds his children thereto, to the exclusion of the Grandfather who made the stipulation.

Father and mother enjoy by usufruct the property left to their Children, that was acquired by their father and mother and inherited by the children, by the decease of one of them (that is in case the children leave no issue) and after the decease of the said father and mother, who enjoyed the property by usufruct the said property reverts to the nearest relations of the said children, from whence the said property was derived.

It appears, this usufruct is not allowed to the father and mother in case there are other children living, and 'tis only in case that all the children die leaving no issue, then the parent enjoy, par usufruct the propres naissant derived from them. If the [illegible] having a title

[illegible]

dower on his wife, the wife
is preferred to the surviving
father and mother, for the
enjoyment of her dower, but
after her decease, the surviving
parents of her husband commence
the enjoyment.

If the son acquired estates
and other immoveable property
and dies leaving the same
to his child~~ren~~, and that the
said child afterwards dies
without issue, having neither
brothers or sisters, the grandfather
and grandmother succeed to
the said estates and other
immoveable property in full
property to the exclusion of
all other collaterals, this is
an exception to 912 Art. C. C.
For example suppose, my son
acquires a house, he dies, leaving

one.

the same to his child, this child, who is my grandchild, dies without issue, and that its brothers and sisters, in this case I succeed to my grandchild, to the exclusion of his uncles and aunts, who are my children the reason why ascendants are preferred to the uncles and aunts is that, if the child who made the acquisition had died without children, they would have belonged to the father and mother, and therefore as the acquisitions descended to the grandchild, the ascendants should succeed thereto, to the exclusion of their children, uncles and aunts of the grandchild; and as this the acquisition was the propre naissant of the grandchild, was altho' the

ascend

Civil and natural being of the cote and ligne and at the same time nearer in degree it is just that they should be preferred, but the brothers and sisters of the grandchild exclude the grandfather, because they succeed each other, so long as there are any of them living.

No person is heir contrary to his own wishes, therefore he who is competent to succeed to the deceased is not on that account reputed his heir, the acceptation of the succession alone constitutes the heir.

The being heir carries two conse=quences, 1st the heir is personally bound for the payment of the debts of the succession, altho' they exceed the amount of property inherited. 2d the heir is bound to rapporter in the direct succession, all the donations and advantages that he has had from the deceased as well *inter vif* as by will, for to be divided among all the coheirs, who have not taken the quality of heir, or not made any acte *d'heritier* can renounce or accept the succession at any time provided the same does not exceed the three months, and forty days allowed by the ordinance, altho this term has been allowed to pass without making an inventory, the heir is not on that account deemed to have accepted the succession, he can still make the inventory provided he has not made any act d'heritier.

The heir renouncing the Succession is permitted by the Roman law to accept the same within three years, provided the property lies in the same State, for instance not sold and divided amongst the other heirs.

but to accept or retake in this time, the Succession must be in the direct line,

Altho' every person is at liberty to renounce his rights, yet a renunciation of a Succession must not be made to the prejudice of the persons creditors.

A Minor can discharge himself of his Acceptation of the succession.

The Acceptation of a Succession can be made either purely and simply or by benefit of inventory.

The acceptation pure and simply obliges the person to pay all the debts, that by the benefit of inventory only binds him to pay the debts, as far as the property composing the succession will extend, A Coheir cannot personally be obliged to pay all the debts of the succession, but in order to take advantage of the benefit of inventory it is necessary that the inventory be faithfully made, and without secreting or withdrawing the property of the succession the whole according to the laws of the province.

[illegible]

None but heirs can avail themselves of this benefit. A widow cannot avail herself of this benefit for the acceptation of the community. Universal legatees cannot avail themselves of it for the acceptation of this benefit. The beneficiary heir can, when he pleases, renounce to the Succession by rendering an act to the creditors of the Succession, whether the heritier beneficiary is bound to rapport, what he received from his father, up to the entire portion. What constitutes an [illegible] depait, by simple declaration of consent, or simple declaration when he who is competent to inherit take the quality of heir, or some judiciary act,

&c.

ry act, when the presumptive heir does that which he could do only as heir, as when he disposes of the effects of the Succession, or that he leases the same, either of these constitute him heir to all intents and purposes, and binds him in favor of the creditors, for all the debts, and in favor of the coheirs to the support in the succession in the settlement, but heirs beneficiary have power to do all things without running the risk of becoming heir pure and simple.

If the presumptive heir take out of the estate, what he considers to be due and

owing.

accruing to him in what has been given to him in so doing he performs act of heir, in order to receive what is due to him he must make the demand in justice. It is not deemed an act of heir, if the presumptive heir preserves the property until the inventory is made, nor is it an acte d'heritier to collect all the effects together, neither is the paying the funeral expenses an acte d'heritier, but paying creditors and legacies is; a husband cannot do an acte d'heritier in a succession that falls to his wife, without her consent, otherwise the act would be null with regard to the wife. The presumptive heir does an acte d'heritier, if he transfers his right in the succession to one of the others, a law stranger; on the contrary he does not, if he renounces the succession in consequence of a transaction with the heirs of the deceased. At the death of a person the heir is seized and invested in all his natural and civil rights, without the necessity of the interposition of any judicial authority or form for that purpose made. This applies as well to the heirs in the collateral line, as to those in the direct, therefore it ensues.

1st That the presumptive is seized provided he is competent, that is to say, not an idiot, absent, a minor, madman.

2nd The presumptive heir can institute or defend actions, in case of seizure of the effects of the succession.

3d That if one of the children dies after the death of his father, without having taken the quality of heir, or renounced the succession, he is reputed to be an heir, in case it is deemed the same would have been advantageous to him, and his share in his fathers succession does not pass to the children of the heirs, but is divided among the other children heirs, as in the collateral line, so that if [illegible], the brother excludes the sister.

4th That the legatees must demand their legacies from the presumptive heir.

5th That the deceased child is reputed seized by virtue of the [illegible].

Prim.

Persons are deemed dead if they have not been heard of for seven years.

It is an important question, which of two persons dying at the same time (eg by Shipwreck or other causes) ought to succeed the other, this question has been decided various ways by Auctors on the presumption that he who is the stronger and most vigorous by reason of his age, ought to succeed the other.

To succeed to a person two conditions are necessary.

1st that he should be the nearest relation.

2 That he is competant to succeed.

With regard to proximity the

Succession is not transmitted in the following cases.

1st When there is doubt with respect to the survivor, of presumption art 326.

2nd In case of collateral succession to propres and avitins in which the male excludes the females, art 925.

3rd In the case of representation.

4th When the nearest in degree renounces the succession, in which case the succession goes to next in degree.

5th The proximity is regulated, regard being had to the [illegible] of the deceased, derived and paid to them by their father and mother.

Renunciation not only excludes those who make them.

them, but also their children

Disherison for legitimate cause excludes the disinherited from the Succession of his father and Mother, but the child of the disinherited after his decease is competent to succeed their grandfather and grandmother.

Representation in the direct line is allowed *ad infini*, this should be understood of the descendants coming to the succession of their ascendants, they are held their ascendants as representing those that preceded them in degree, Ascendants cannot represent descendants, thus the *Aieul* paternel cannot pretend to a right of division in the Succession intestate of his Grandchild.

Grandchild by representation of his son, with the brother of the descendant by parents, the Grandchild succeeds his Grandfather with his uncles and Aunts, by representation of his father.

A grandchild succeeds his Grandfather altho' his father has renounced to the succession.

Representation in the collateral line is admissible in the following case; when the nephews and nieces, come to their uncles and Aunts succession, with the brothers and sisters of the deceased, in which case of representation, the representatives succeed by Souche and not by têtes.

As the right of Succession and the capacity of the person to succeed is founded in the civil law, consequently that right can be destroyed by a civil cause.

There are several causes that render persons incapable of succeeding, which they are [illegible].

1st Persons condemned to death, or to perpetual banishment or religious profession.

2nd Illegitimate children, but they are rendered capable by subsequent marriage of their parents, children of legitimated succeed their parents.

If

The Succession of illegitimates dying without children, went to the king, if the bastard was born, lived and died in the same seigniory the seignior inherits before the king.

Aliens are incapable of succeeding or to have heirs, their succession goes to the king, but their children born in the kingdom can succeed them.

If a person takes up arms against the king.

An assassin cannot succeed the person he has murdered.

A husband killing his wife in adultery cannot profit by his wife's property.

Renunciation made by daughters in the contract of Marriage.

marriage, by reason of the dot. But if the nephews came in their own rights and not by representation, they succeed by tetes, and not by *souche*, so that one will not have more than another.

In all cases, males descended from a female, and succeeding as aforesaid by representation, do not inherit any part of fiefs, left by their uncle and Aunt, because their mother would not have inherited any part of her brothers fief, but on the contrary if daughters descended from a male, they succeed with their Uncles, in fiefs as representing their father, (this however appears to be doubtful,) it has been adjudged contrary.).

It follows from this article, that males issue of females en collateral, succeed equally in fiefs, with their cousins germain males and issue of males, the reason is that they succeed de leur chef and not by souche, it must not be considered from whom they are descended.

There is another question, A person dies, leaving as heirs, a sister, a niece issue of a brother, and two nephews issue of a sister, the question is, whether the niece issue of the brother takes part in the fief? It is certain that if the sister of the deceased were living, the niece would be excluded by the nephews, issue of a brother, which would also be the case is that the nephews take a issue of the sister, this last decision is very dubious.

The argument on this question is this, that for the reason that the niece issue of a brother, is excluded by her uncle, altho' she appears by representation of her father, by the same parity of reason, the nephew altho' issue of a sister, should exclude the niece issue of a brother, being in the same degree, (by art 25) she should be excluded; otherwise the ~~nephew~~ and niece, brother and sister appearing by representation would all succeed.

However in this case the brother excludes the sister, and the brother nephew of the deceased takes all the part that his father would have been entitled to in the fief, so that the niece issue of ~~the~~ brother far from excluding the nephews issue of a sister, is on the contrary excluded by them.

In other collateral succession, there are fiefs, the children of the brothers do not exclude the Aunts, sisters of the deceased, but the said Aunts succeed in their own rights, as being the nearest in degree, with the children of the brothers, and if there are several children of brothers, they succeed only in one the [illegible] This is an exception to Art. 25.

The coutume allows the testator

.will that his neices shall
succeed with his nephews, in
the fief, providing always that
if the fief is propre, the
neice's shares do not exceed
a fifth.

If there is a neice of the
deceased's brother, with the
nephew and aunt, the neice
will be excluded.

If the neice concurs with the
aunt, there would be no exception
to her, because she comes by
representation, there being no
male to exclude her.

If the deceased leaves a brother,
in this case the brother and his
nephews, would succeed,
dans les biens nobles, and the
sister excluded by her brother. 1445.
the children of the eldest son.
Whether male or female, during

their father, and coming to their Grandfather or Grandmother Succession, represent their father in the right of aînesse, and if there are only females they represent their father as one body to the said right of aînesse.

In the collateral line, the nearest relations of the deceased, he dying without heirs, succeed him as far as regards his moveables and conquets immeubles, but not to the exclusion of the deceased's brothers children, coming by representation as above. And with regard to his propres, his nearest relations, saving and excepting that in fiefs, the males exclude the females of the same degree, but not to the exclusion of the brothers and sisters children coming by representation, as above, except the Lineal [illegible]

It is sometimes difficult to determine what property is propre, to this effect it must be observed that immoveables are acquets before they are propres, immoveables inherited by descendants are of course propres to the heir or person inheriting, immoveables are also considered propres in the succession of Ascendants, if inherited by them, from their Children: these are propres, Pout 236.

It is not the same with regard to things given or bequeathed to a person in the collateral line, they are considered as acquets in the succession of the person to whom they are given or bequeathed but it falls to the domaine of the.

the conjoint in marriage by succession from the deceased in default of heirs, *acquets* not *propres*.

Likewise of property falling to the Seigneur by *droit de deshérence*, or otherwise.

All donations as well *entre vifs* as testamentary, made by father and mother to their children are *propres* to the children, art 246.

Confiscated property returned by the king to the children of the condemned, are *propres* in their persons, art 183 and 246.

A thing given by a stranger to one of the conjoint, on condition that it shall be *propre*, is only deemed an *acquet* in his or her succession.

Rentes sold and transferred and subsequently withdrawn by the children and heirs of the vendor or debtor are propres in their Succession.

The propres made by contract of Marriage preserve its nature, on the side of the person qui stipule, which it returns to his children.

When the whole of an estate propre is adjudged to one of the coheirs at auction or before Notary, the share or portion due to the heir out of the estate, is preserve the quality of propre.

An estate acquired from a Succession, by the partition thereof, or taken in exchange for and instead of a propre, is reputed propre. Art 145.

The immoveables assigned to the Children for the same [illegible] are reputed [illegible]. Art 25.

[illegible].

with regard to those given in payment of the dower prefix, the common opinion is that they are acquets.

The retrait lignager in Communitée is another means of rendering Acquet propres, but the retrait feodal does not, that is land was acquet propre, for instance, the father being his son vassal, sells a fief propre, the son as Seigneur du fief dominant, receives it by retrait feodal, in this case it is an acquet in the person of the son.

An edifice erected a fond propre, is also reputed propre.

An Estate propre paternal given in partition to one of the coheirs for his share in his maternal estates, is reputed propres maternal in his person.

Money due at the time of the decease, are propre held, and also if found in the deceased chest or possession, are reputed moveables, to belong to the heritiers des meubles.

The manner in which the collateral succession of roturiers are divided.

The collateral heir of a defunct in the same degree divide equally amongst them par tête the property and succession of the defunct as well moveables as estates not held in fief.

In this succession there is no rapport of the things given, entre vifs, to them who are heirs.

heirs but cannot be heir collaterally;
Except brothers and sisters children
also in their share (if they succeed
with their uncle (in sane tete,
in the place of father and
Mother, and between them
the share is divided equally;
there an exception to this with
regard to fief in Art 322.
Relation altho' not descended
from the person who acquired
the estate, are reputed parens
du cote et ligne.
As there appears to be some
difficulty to know who are
parens du cote et ligne, this
is the way it is decided, the
nearest maternal relation,
and the nearest paternal
relation, is called to the succession
of the propres paternal.
According to order to the succeed

to the *propre* *Ancien* of the defunct, it is necessary you should be his nearest relation, of the *coté* *et* *ligne* *de l'acquéreur*, it is indifferent, whether you are related to the *acquéreur* by males or females, the same with regard to fief, to render this more intelligible, suppose that I acquire an Estate, which falls to my Grandchild, by my succession, and that my Grandchild dies without issue, the estate will then fall to the nearest relation of my Grandchild on my side, it is all the same whether this relation be related to him by my father's or mother's side, consequently, my Grandchild's natural relations would be excluded, On the contrary let us suppose that an estate fell

to my son, by my succession,
which estate was acquired by
my paternal grandfather,
great grandfather to my
son, to succeed my son in
this _propre_, it would not be
sufficient, to be the nearest
relation of my son on my side,
but I must be his nearest
relation to my grandfather who
acquired the property.
As _propres naissant_, falls without
distinction to the defunct's
nearest relation _du cote_ from
whom he inherited the same.
In order to retain the estate
acquired by me and inherited
by my son from my succession,
and held by him, it is sufft
to be his relation on my side,
but to _retain_ an estate acquired
by my son's great grandfather,

and.

unadmitted by kind (by law).
And told, you must be
related to my son in his paternal
great grandfather's side,
to exercise the right of *retrait*,
you must be related to the *acquirer*
by exercising the *retrait* the
descendants of the acquirer,
in the direct line, altho' farther
removed should be preferred
to his relations in the collateral line.
By the direct, the defunct's father
was admitted to the succession
of his *propres naissant* derived
from his father, to the exclusion
of the defunct's uncle, altho' in
the same degree, and also
of the *coté et ligne* of the acquirer

of the estate, and father of the defunct, the reason is, that the nephew is Grandchild of the acquirer, and the defunct's uncle, brother to the acquirer, that therefore the nephew is a descendant of the acquirer, whereas the uncle of the defunct is only a relation of the defunct, his nephew in the collateral line, this does not admit the relations of the acquirer to the succession of the propres coming from him, altho' not descended from him in the direct line, but but when there are no descendants of the acquirer which altho' farther removed should be preferred to those that are only of the cote et ligne.

If there are no heirs de cote et ligne

distance.

whence the estate was derived, the heirs of the other cote et ligne, nearest in degree and competent to inherit, shall succeed. Therefore the father and mother in this case are preferred in the succession of propres, de l'autre ligne, to the defunct's collaterals, that is in case there are no parents de la ligne; the intention of this article is not to exclude the surviving father or mother, in the succession of propres de l'autre ligne, they should not be excluded by collaterals distantly related, in this case, the surviving father has the same right to succeed as he has in the moveables, acquets, and conquets immoveables of his children, to the exclusion of all.

the deceased's children collateral.

Relations of *une autre ligne* cannot dispose by will or otherwise, of more than one fifth of the estates inherited by them, in default of *parents de la ligne*; by the Roman law, the right of inheriting in the collateral line is limited to the tenth degree, but this is not followed in France.

In the collateral line, estates held *en* fief are divided amongst coheirs, without the right of prerogative of Ainesse which is divided equally between them, which excluded excludes the females from the succession, if in same degree with the males. Art 25.

The heirs of a defunct, in the same degree, as well of moveables as immoveables,

are personally bound to pay
and discharge the debts of the
estate, each in the proportion
they inherit from the defunct,
that is when they succeed equally,
as all the heirs together
represent the deceased,
each for a certain share
or portion, they are consequently
bound to pay in the same
proportion.

Creditors have their recourse
against each of the heirs for
their debts in the respective
proportion that they inherit.

Therefore an agreement between
the heirs, that one shall pay
all the debts, this is held disregard

with regard to them, but not with regard to the creditors, if one of the heirs becomes insolvent, the loss is the creditors; In all cases, if the heir is in possession of the estate that was mortgaged by the deceased, for the payment of a debt, he can be prosecuted for the whole debt, having his recourse against the other heirs, (this article is an exception to the foregoing) the heir cannot discharge himself of his solidité by deguerpissement, they give only the right of deguerpissement to the third possessors, but the author of the coutume is of a different opinion, he says, the heir can discharge himself by deguerpissement. The heir having once acknowledged a debt of the deceased, cannot be prosecuted on an hypothecary action, as possessor of his property.

It is an important question whether the hypothecary action for a legacy is *Solidaire*, the Author of the Coutume esteems it not, because the property of the deceased was never mortgaged for a legacy.

When some of the heirs inherit the moveables, *Acquets*, and *Conquets* immoveables, and others the *propres*, or if they are donees, universal legatees, they are bound to contribute towards the payment of the debts, each in proportion to the emolument he derives from the succession, the eldest son in the direct line is not bound to pay any more on account of his right of *Ainesse*;

Hen.

Here follows several questions. In case the wife's propres are alienated, is the heir to the husbands propres bound to contribute to the remploi des propres? By an Arret it was decided, that the heir to the moveables, and the heir to the propres, should contribute in proportion to the emolument received by them.

Is the heir to the wife's propres bound to contribute to the payment of the debts of the communauté? He is, if the heir to the moveables and acquets accepts the community.

If the heir to the wife's moveables accepts the communauté, and the husband's propres alienated, is the remploi a debt to which the heir to the wifes propres would be obliged to contribute,) the opinion is that the heir to the moveables, is alone bound, because it is a debt that must be taken out of the Communauté, the remploi des propres du mari being a debt of the husbands, and not of the wifes, and the property composing the communauté, is alone bound for the same. Should the debts contracted by a woman, for repairs made to buildings, on her propres, be paid by the heir to the propres? decided by Arret, that all the heirs are bound to pay in proportion to emolument.

4

If in the child's Succession the heirs to the [illegible] portion, are bound to pay, and acquit, the arrears of the douaire prefix, during the wife's life, or is the Mother bound to contribute in proportion to the emolument? § General rule it is given against the wife.

Is the heir to the movables and acquets, solely bound for payment of money remaining due on an estate purchased by the defunct, this being a debt of the Succession, the common opinion is that all the heirs should contribute in pro rata.

Debts due, those from whom the estate was derived, are debts of the Succession, and should be paid by all the heirs in pro rata.

4th

the preciput when taken by the Survivor in Moveables, is not due by the heirs, but if taken in money is due by all of them.

If the Surviving father and Mother who succeed by usufruct, is bound to contribute to the payment of the debts? the opinion of the commentator is, that he is not bound, but on the contrary, that he who succeeds to entire property is bound.

Are all the heirs bound to contribute to the payment of the debts which certain creditors are assigned? it is held in the affirmative.

Is the balance due by a defunct to his coheirs, a Mobiliere and personal debt? held in the affirmative.

Are the Actions Judiciaires for the restitution of the dot, and

the

other matrimonial conventions, which the mother, surviving her husband, could exercise, against his succession lost, in the person of the child, heir to his father and mother, and deceased minor, so do they remain distinct and separate to be exercised by his 'maternal heir'! by an arrêt it has been decided in favor of the paternal heirs;

by the donees mentioned in this article, are not meant donees *entre vifs*, but testamentary donees, and donees *à cause de mort*, because the donees entre *vifs*, are not subjected to the payment of the debts of the donor's succession, without the debt were contracted.

contracted previous to the devising in which case the creditors have an hypothecary action, against the devisees, saving their recourse against the defuncts heirs.

Devisees and universal legatees, are ~~them~~ to whom the defunct has given a certain description of his property, as his moveables, his acquets, the quint of his propres, (or more properly of his propres) but when the legacy is a particular thing, as a house, sum of money, &c, the devisee or legatee, is not bound for the payment of the debts.

Under the head of debts are not only comprised, those purely personal, but those also reputed immoveable, as rentes constituées.

Funeral expenses are debts

&c.

be liquidated by all the heirs, and universal legatees, and donees by aumentie des fonds is a debt of the succession.

Rentes foncieres are reputed reelles attached to the estate, and are due by those only who succeed to the estate.

Particular bequests, or debts of the succession, should be discharged by all the heirs, provided the same does not prejudice and diminish the four fifths of the propres.

The aîné is not bound to contribute more than the other heirs, by reason of his droit d'ainesse.

It is a question whether the aîné should be recompensed for his right of ainesse, in his father's fief, which after the father deceased was sold at the suit of his creditors, by an arrêt it was adjudged, in favor of the eldest son, who ought to be recompensed out of the other property belonging to the father, but if the _douaire Coutumier_ is to be taken from a fief, the eldest son contributes more than the other heirs, the same if the _douaire prefix_ is constituted on a _fief_.

In collateral Succession, when males and females succeed, to _fiefs_ and _rotures_, each pays according to their proportion of emolument derived from them respectively.

Parents _et_ _lignagers_ profès do not succeed their parents, nor does the Monastery in their name.

An uncle succeeds his nephew in preference to the cousin german, the reason is, that the uncle is nearer in degree than the cousin, the uncle

living.

being in the third degree, and the cousin german in the fourth; as it is of the greatest consequence to know how to count the degrees, in order to regulate Succeſsion, here follows the way to make the comparison of degrees.

Those that descend one from the other are ascendants and descendants and those that do not descend from each other are collaterals. These (ascendants, descendants, and collaterals, are more or leſs removed from each other, these removals are the degrees, neceſsary to be known as well in Succeſsion as for the prohibition of marriage, and for that purpose we must put the ascendants and descendants in one line, to be called the direct line, and the collaterals in another, to be called the collateral line.

In the direct line the number of degrees are counted by generation, so that each generation engenders one, thus the son is the first degree removed from the father, that is to say, in the first degree of relationship to him, because, between father and son there is but one generation, by the same reason, the grandchild is removed two degrees from his grandfather, because there are two degrees or two persons engendered, namely the Son and Grandson.

The number of degrees that occur between collaterals is counted in like manner by generation or persons engendered, but with this difference, that in order to find out the number, recourse must be had to the common stock, from whence the collaterals descended, of whom we wish to ascertain the degrees, and count from this stock and the collateral, how many generations there are, and say of that, the collaterals whom we wish to know the degree, are removed so many degrees.

For example, I wish to know how many degrees two cousins german are removed from each other, I must recur to them from whom they are both descended, who is the grandfather, and say between the grandfather and two grandchildren there are four generations or persons engendered, namely, the two sons, and the two grandsons,

or.

of the degrees in question, and whereas with regard to each other cousins germans, consequently they are removed from each other four degrees.

But according to the common law, when the collaterals are not in the same degree from the common stock, as the uncles and nephew, you must find out how many degrees the farthest removed is from the common stock, so many degrees they are removed from each other, thus the nephew is two degrees removed from the grandfather, and consequently is two degrees removed from the uncle, by the civil law, the uncle and nephew are removed three degrees from each other, and by the common law only two.

&c.

The uncle and the nephew of a defunct, who has left neither brother or sister, succeed equally, as being in the same degree, and without in this case there being necessity of representation, this must be understood as regards the moveables, acquets, and conquets immoveables, and provided they are both of the *ligne* they would also succeed to the *propres*. The reason why the uncle does not succeed with the nephew if there are brothers or sisters of the deceased living, is because the brother or sister would exclude the uncle as being nearer in degree, and the nephew is admitted with them as representing his father.

Brother and Sister suppose they are only issue of the father or the Mother, succeed equally with the other brothers and Sisters, issue only of the father or Mother, to the moveable acquets, and conquets immoveable, of their deceased brother or Sister.

The above has also reference to the uncles and collateral relations, that are connected on one side.

The heir in the direct line who takes the quality of heir by benefit of inventory, is not excluded by a relation, who takes the quality of heir pure and simply, but in collateral successions the heir simple excludes the heir by benefit of inventory.

The heir who takes the quality of beneficiary heir, can afterwards (in order not to be excluded by the are pure and simple) take the quality of heir pure and simple; He who accepts a succession by benefit of inventory, being a major and ayant faite acte d'heritier, is not afterwards admitted to take the quality of heir pure and simple, to exclude his coheir, who took the quality of beneficiary heir jointly with him. When there are different heirs, namely some succeeding to the propres paternels and others to the propres maternels, and others to the movables and acquets, the heir to the propres paternels, can take that capacity by benefit of inventory, without being excluded by the heir to the propres maternels, who takes the quality of heir pure and simple. The minor who takes the quality of heir simple, can not exclude the heir by benefit of inventory, who is nearer in degree, but a Major can, this is in Collateral Succession, the minor can also if he finds security that he will not avail himself of his right of restitution, when he becomes of age.

The beneficiary heir, or Curators to vacant estates, should make an inventory in the presence of the principal creditors, and have the sale of the Moveables made in some public place.

The End.

Contents.

A Fief, 1.
Quint. 1.
Relief. 1.
Fiefs in Mortmain. 1.
Feudal Seizure. 2.
Fealty and Homage. 3.
Denombrement. 4.
Feudal right prescription "
in thirty years. 5.
Droit d'Ainesse. 5.
Retrait feodal. 6.
Retrait prescription 6,
in thirty years. 6"
Right of retrait lost "
if quint is received. 6.
Retrait lignager. 8.
Droit de quint due. 10.
Droit de quint not due. 11.

Quint.

Quint not due. 11.
Females do not 13.
inherit with males "
in Succeſsions and "
inheritances. "
When fealty and "
homage only is due. 14.
Relief when due. 14.
Commencement of Relief. 15.
Vaſsal can alienate. 15.
When Seigneur can destrain. 15"
Property acquired by a 16.
Seignior in his fief. "
Franc Aleu. 16.
Cens sur Cens. 17.
Lods et Ventes. 17.
Amende. 17.
Payment of lods et vents, "
how recoverable. 17.
Moveables. 18.
Immoveables. 19.
Propres. 20.

[illegible]

Propres Ancien et "
naissant. 20.
Fictitious immoveables. 21.
Rents constituées are "
immoveables. 21.
Notes and Obligations "
are immoveables. 22.
What Moveables and 22.
immoveables are. "
Donation of rente is "
Subject to ~~insinuation~~. 28.
Rentes constituées not "
Subject to retrait. 28.
When private contracts 24.
become Mortgaged. "
Prescription. 30.
Of Retrait lignager. 34.
Executors and legataires. 40.
Community. 42.
continuation of "
communauté. 63.
Dower. 75.

End.

Garde Noble et "
Bourgeois. 95.
Donations. 96.
Don Mutuel. 102.
Testaments or "
Wills. 113.
Successions in direct "
and collateral line. 125.

The End.

The laws of every nation are more or less mixed with the laws of nations that have passed away, but none more than the laws of Canada, which have for their basis the jurisprudence of France and England. The laws of France being composed of those of the Romans, Germans, Franks, Celtic &c. Those of England, of the Britons, Romans, Saxons, Danes, Normans, &c. In the jurisprudence of France and England, the Roman law holds the dominant place. — The End. —

75531
4,500
LELKIBEN

Stanley. Clark. Bagg.

Montreal 16th Nov. 1841.